

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DUCK MARITIME CORP.,

Plaintiff,

-against-

OLAM NIGERIA LTD.,

Defendant.

USDC SDNY
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08 Civ. 10960 (RJH)

MEMORANDUM OPINION
AND ORDER

The Court ordered plaintiff to show cause why the attachment in this action should not be vacated and the action dismissed without prejudice for lack of jurisdiction pursuant to *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, Nos. 08-3477, 08-3758, 2009 WL 3319675, at *10-*11 (2d Cir. Oct. 16, 2009). In response, plaintiff argues that *Jaldhi* does not apply to this case because defendant posted alternative security, pursuant to an agreement between the parties (the "Bond Agreement"), in exchange for plaintiff's release of funds attached as electronic fund transfers ("EFTs"). The Bond Agreement was never "so-ordered" by the Court. Both plaintiff and defendant consent to the Court's retaining jurisdiction over the Bond Agreement.

As this Court recently noted, it is not clear that an agreement which was never approved by the court confers personal jurisdiction over defendant. *See Sifandros Carrier, Ltd. v. LMJ Int'l, Ltd.*, 08 Civ. 5999 (RJH), 2010 WL 165989 (S.D.N.Y. Jan. 15, 2010). By consenting to the Court's jurisdiction, however, defendant has waived its personal jurisdiction defense, and the Court need not raise that defense *sua sponte*. *See*

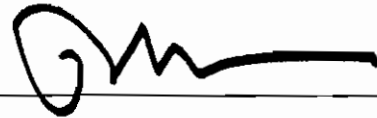
id. (citing *Wis. Dep't of Corrections v. Schact*, 524 U.S. 381, 394 (1998) (“[personal jurisdiction] can be waived and courts need not raise the issue sua sponte.”). As a housekeeping matter, the Court’s Order of Maritime Attachment and Garnishment dated April 14, 2009, is hereby vacated, but the Court retains jurisdiction over disputes pertaining to the Bond Agreement. The Clerk of the Court is requested to place this case on the suspense docket.

SO ORDERED.

Dated: New York, New York

~~January~~ ____, 2010

Feb. 16

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a series of loops and a long horizontal stroke.

Richard J. Holwell
United States District Judge